

APPEAL NO. 030399
FILED APRIL 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 13, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and had disability from June 14 through August 12, 2002. The appellant (carrier) appealed, arguing that the compensability and disability determinations of the hearing officer were against the great weight and preponderance of the evidence; were not supported by legally sufficient evidence; and incorrectly interpret and apply applicable provisions of the 1989 Act. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant contended that he sustained an injury while lifting various construction materials into a dumpster. The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994.

The questions of whether the claimant sustained a compensable injury and whether he had disability presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Although there was evidence that the claimant's treating doctor took him off work altogether on June 14, 2002, the carrier asserts that the claimant cannot establish disability given the availability of light-duty work consistent with his restrictions. The carrier cites, in support of its position, Texas Workers' Compensation Commission Appeal No. 012646, decided December 10, 2001. However, in that case, we affirmed the hearing officer's determination that the claimant had disability for the period of light-duty, notwithstanding the availability of light-duty employment consistent with the claimant's restrictions. Indeed, we have said on numerous occasions that a claimant

under a light-duty release does not have an obligation to look for work or show that work was not available within his restrictions. Texas Workers' Compensation Commission Appeal No. 022908, decided January 8, 2003. Further, in the instant case there was conflicting evidence about whether an offer of light-duty employment was even made to the claimant.

The carrier also argues that the claimant did not timely report his alleged injury thereby relieving the carrier of liability, and contends that this issue was litigated by consent. We find no merit in this argument. There was no issue of timely reporting at the CCH. Further, the evidence at the CCH from the quality control manager for the employer was that she became aware that the claimant was alleging he sustained a work-related injury on (day after the date of injury), the day after it occurred. Additionally, the Employer's First Report of injury or Illness (TWCC-1) shows the claimant reported the injury on (day after the date of injury).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN ALTERNATIVE INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Robert W. Potts
Appeals Judge